

STATUTORY CRIMINAL 4.07

JUSTIFICATION IN DEFENSE OF PREMISES

A defendant in lawful possession or control of the premises is justified [in threatening to use deadly physical force] [to use physical force] [to attempt to use physical force] [to threaten to use physical force] [to apparently attempt to use physical force] [to apparently threaten to use physical force] in defense of premises if a reasonable person in the situation would have believed it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by another person in or upon the premises. The force used may not be greater than reasonably necessary to prevent the apparent [attempted] criminal trespass.

An actual criminal trespass is not necessary to justify the use of physical force in defense of premises. A defendant is justified in defending premises if the defendant reasonably believed that it appeared that a criminal trespass was being [committed] [attempted]. You must measure the defendant's belief against what a reasonable person in the situation would have believed.

The defense ends when the [apparent] [attempted] criminal trespass ends.

If evidence was presented that raises the justification defense of premises for [insert count number and name of offense], then the State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

SOURCE: A.R.S. § 13-407 (statutory language as of October 1, 1978) and § 13-205 (statutory language as of April 24, 2006); *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995).

USE NOTE: Use the language in brackets as appropriate to the facts

A.R.S. § 13-407(A) provides that a person or the person's agent in lawful possession or control of the premises may be entitled to claim this defense.

"Physical Force" and "Deadly Physical Force" are defined in A.R.S. § 13-105 (Statutory Definition Instructions 1.05(12) & (28)).

"Possess" is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.05(30)).

"Possession" is defined in A.R.S. § 13-105 (Statutory Definition Instruction 1.05(31)).

"Premises" is defined in A.R.S. § 13-407(C) (Statutory Instruction 4.07(1)).

"Criminal Trespass" is defined in A.R.S. § 13-1501, *et seq.*

Justification defenses under chapter 4 of A.R.S. Title 13 are not affirmative defenses for crimes occurring on or after April 24, 2006. However for crimes occurring before this date, they remain affirmative defenses. In such cases, the court shall **delete** the last paragraph of this instruction and instruct on "affirmative defense" so as to inform the jury on the correct burden of proof. "Affirmative defense" is defined in A.R.S. § 13-205 (Statutory Instruction 2.05). An affirmative defense must be shown by a preponderance of the evidence. "Preponderance of the evidence" is defined in Standard Instruction 5b(2).

COMMENT: The Arizona Supreme Court has required that an instruction under A.R.S. §§ 13-404 & -405 must include a reference to the reasonable person standard. *State v. Grannis*, 183 Ariz. 52, 60-61, 900 P.2d 1, 9-10 (1995). Because A.R.S. § 13-407 requires a reasonable person standard, the direction given in *Grannis* will likely apply in those situations.

Grannis also held that, “[u]nder A.R.S. §§ 13-404 and -405, apparent deadly force can be met with deadly force, so long as defendant’s belief as to apparent deadly force is a reasonable one. An instruction on self-defense is required when a defendant acts under a reasonable belief; actual danger is not required.” 183 Ariz. at 61, 900 P.2d at 10. (emphasis in the original). The Committee believes that the Grannis reasoning regarding self defense and defense of third persons would also apply to defense of premises. Consequently, the Committee has included the word “apparent” in the defense of premises instruction.

A person may use deadly physical force in the defense of premises only if it is used in the defense of the person or third persons as described in A.R.S. §§ 13-405 & -406. See A.R.S. §13-407(B).

The term “lawful” possession or control is not defined by statute. However, it appears from case law that it has the same meaning as “possession” as defined in A.R.S. § 13-105. See, e.g., *State v. Malory*, 113 Ariz. 480, 483, 557 P.2d 165, 168 (1976) (noting that lawful possession or control is shown if the accused had the property under his control in the sense that it was under his direction or management).

While a person’s entry on premises may be initially lawful based on express or implied invitation, the person in lawful possession or control always has the right to withdraw that invitation, making such entry a trespass, at which time reasonable force may be used to eject the trespasser. See *Ramirez v. Chavez*, 71 Ariz. 239, 226 P.2d 143 (1951) (bar owner had the right to remove an unruly bar customer).

MCAO 7/2006